

FILED

MAY 4 2006

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY _____
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

RODNEY ADAMS,
Plaintiff

§

A06CA338 SS

VS.

§

CIVIL ACTION NO. _____

LONGHORN INTERNATIONAL
TRUCKS, LTD.,
Defendant

§

JURY DEMANDED

PLAINTIFF'S ORIGINAL COMPLAINT

This is an action arising under the Fair Labor Standards Act of 1938 (FLSA), 52 Stat. 1060, as amended, 29 U.S.C. § 201 *et seq.* (1994 ed. and Supp. III) ("FLSA"). This action is brought both as an individual action and a collective action to recover unpaid overtime compensation, liquidated damages, and attorney's fees owed to plaintiff Rodney Adams, and all other similarly situated employees employed by, or formerly employed by defendant, its subsidiaries and affiliated companies.

Parties

1. Plaintiff Rodney Adams is a former employee of defendant, as that term is defined by the FLSA, and is represented by the undersigned.
2. Longhorn International Trucks, Ltd. ("Longhorn") is a business entity authorized to do business in the State of Texas, and is an employer as that term is defined by the FLSA. With respect to plaintiffs, Longhorn is subject to the provisions of the FLSA. Longhorn maintains its office at 4711 East 7th Street, Austin, Texas 78702. Longhorn was at all relevant times an enterprise engaged in commerce or in the production of goods for commerce, as defined by 29 U.S.C. §§ 203(r)

and (s). Longhorn's registered agent is Duane W. Kyrish, who may be served at 4711 East a7th Street, Austin, Texas 78702, or wherever else he may be found.

Jurisdiction and Venue

3. This Court has jurisdiction under the FLSA, and venue is proper pursuant to 28 U.S.C. § 1391(b), as defendants and plaintiffs transacted business within this judicial district, and the events underlying this complaint occurred within this judicial district as well.

Factual Allegations

4. Plaintiff worked for defendant in the capacity of performing maintenance and in refurbishing motor vehicles. Plaintiff was paid on an hourly basis and, on a number of occasions, worked over 40 hours per week without overtime compensation, but was paid "straight" time for all hours worked, including those over 40 hours. For some period of time prior to becoming an employee of Longhorn, plaintiff worked at Longhorn through a temporary personnel agency, during which time plaintiff was paid time and a half for overtime worked. Time and a half pay ceased immediately when plaintiff became a permanent Longhorn employee.

5. At all times relevant hereto, the defendants knew of, approved of, and benefitted from plaintiff's regular and overtime work.

6. Plaintiff is not, nor did he ever serve in the capacity of an executive, administrator, professional or outside sale representative, as those terms are understood pursuant to 29 C.F.R. § 541. Therefore, plaintiff is not exempt from the protection of the FLSA.

7. Defendant did not make a good faith effort to comply with the overtime provisions contained within the FLSA.

8. Defendant's actions were willful and in blatant disregard for plaintiff's federally protected rights.

Collective Action Allegations

9. This action is concurrently maintainable as an "opt-in" collective action as to claims for unpaid overtime wages, liquidated damages and attorney's fees, under 29 U.S.C. § 216(b) of the FLSA.

10. In addition to plaintiff, a number of other current employees and an unknown number of former employees located throughout Central Texas are similarly situated to plaintiff with regard to their job requirements and pay provisions, in that defendant has also willfully, intentionally and maliciously denied them overtime compensation while they were employed by defendant during the liability period.

11. Plaintiff is representative of all other similarly situated employees and is acting on behalf of their interests as well as his own interests in bringing this action.

12. Therefore, all similarly situated employees under 29 U.S.C. § 216(b) should be notified of and allowed to opt into this action for the purpose of adjudicating their claims for actual and liquidated damages, as well as attorney's fees and all costs of Court as called for under the FLSA.

CAUSE OF ACTION

Unpaid Overtime Wages

13. Based on the foregoing, defendant violated the FLSA by failing to compensate plaintiff and all other similarly situated employees at one and a half times their hourly wage they

should have been paid for time worked in excess of 40 hours per work week, contrary to the requirements of Section 7 of 29 U.S.C. § 207.

14. Plaintiff and all other similarly situated employees have suffered damages as a direct result of defendant's illegal actions.

15. Defendant is liable to plaintiff and all other similarly situated employees for all unpaid overtime compensation, liquidated damages, attorney's fees and costs of Court under the FLSA by failing to compensate plaintiff and all other similarly situated employees at one and a half times their regular hourly rates for time worked in excess of 40 hours per work week, for the three-year period preceding the filing of this lawsuit.

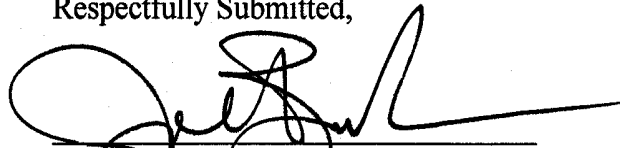
Demand for Jury Trial

16. Plaintiff and all other similarly situated employees who opt into this lawsuit hereby demand a jury trial as provided by Rule 38(a) of the Federal Rules of Civil Procedure.

Prayer for Relief

17. Plaintiff and all other similarly situated employees ask this Court to hold the defendant liable for violations of the FLSA, and that he be awarded all overtime wages owed to him, that he be awarded liquidated damages in an amount equal to all unpaid overtime wages, that he be awarded his attorney's fees and costs, and for all other legal and injunctive relief the Court deems necessary and proper.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Josef F. Buenker', written over a horizontal line.

Josef F. Buenker

TBA No. 03316860

1225 North Loop West, Suite 1020

Houston, Texas 77008

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713-868-3411 Facsimile

ATTORNEY-IN-CHARGE FOR PLAINTIFF

OF COUNSEL:

LAW OFFICES OF JOSEF F. BUENKER, P.C.

Douglas B. Welmaker

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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Rodney Adams

DEFENDANTS

Longhorn International Trucks, Ltd.

(b) County of Residence of First Listed Plaintiff Harris

(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Travis

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Josef F. Buenker; 1225 North Loop West, Ste. 1020; Houston, TX 77008; 713-868-3388

Attorneys (If Known)

A06CA338 SS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

☐ 1 U.S. Government Plaintiff☒ 3 Federal Question

(U.S. Government Not a Party)

☐ 2 U.S. Government Defendant☐ 4 Diversity

(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

☒ 1 Citizen of This State

DEF

PTF DEF

☐ 1 Incorporated or Principal Place of Business In This State☐ 4☐ 2 Citizen of Another State☐ 2☐ 2 Incorporated and Principal Place of Business In Another State☐ 5

Citizen or Subject of a Foreign Country

☐ 3☐ 3 Foreign Nation☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	PROPERTY RIGHTS	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 650 Airline Regs.	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 660 Occupational Safety/Health	SOCIAL SECURITY	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	LABOR	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input checked="" type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 850 Securities/Commodities/Exchange
<input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY	<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 864 DIWC/DIWW (405(g))	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 890 Other Statutory Actions
	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 740 Railway Labor Act	FEDERAL TAX SUITS	<input type="checkbox"/> 891 Agricultural Acts
	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 892 Economic Stabilization Act
	PERSONAL PROPERTY	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 893 Environmental Matters
	<input type="checkbox"/> 370 Other Fraud			<input type="checkbox"/> 894 Energy Allocation Act
	<input type="checkbox"/> 371 Truth in Lending			<input type="checkbox"/> 895 Freedom of Information Act
	<input type="checkbox"/> 380 Other Personal Property Damage			<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
	<input type="checkbox"/> 385 Property Damage Product Liability			<input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS		
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence		
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	Habeas Corpus:		
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 530 General		
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 535 Death Penalty		
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 540 Mandamus & Other		
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 550 Civil Rights		
	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 555 Prison Condition		

V. ORIGIN (Place an "X" in One Box Only)

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

FLSA 52 Stat. 1060, as amd 29 USC §201, et seq (1994 ed. and Supp. III)

Brief description of cause:

Claim for unpaid overtime compensation

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND:

☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

May 2, 2006

SIGNATURE OF ATTORNEY OF RECORD

/s/ Josef F. Buenker

FOR OFFICE USE ONLY

RECEIPT #

385594

AMOUNT

350.00

APPLYING IFP

JUDGE

MAG. JUDGE